

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. No.85 of 2005

Judgment reserved on:26.9.2006

Date of decision:29th September,2006

Rajinder Singh and others

.....Appellants.

VERSUS

Suresh Kumar and another

.....Respondents.

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting? NO

For the Appellants : Mr.Bhupender Gupta,Senior Advocate
with Mr.Janesh Gupta,Advocate.

For Respondent No.1 : Mr.Rakesh Jaswal, Advocate,

For respondent No.2 : Mr.Deepak Bhasin, Advocate

Deepak Gupta, J.

This appeal by the owner is directed against the award of the learned Motor Accident Claims Tribunal, Bilaspur in MAC Case No. 53 of 2004/02, dated 24.12.2004 whereby the learned tribunal has awarded a sum of Rs.3,84,500/- in favour of claimant, Suresh Kumar and fastened the owner and driver of the vehicle , i.e. the present appellants, with the liability to pay the said amount.

According to the claimant on 4.2.2000 he was returning from school to his house. At a place near

¹ **Whether the reporters of the local papers may be allowed to see the Judgment?**

Nehari, he got down from a bus. Tractor No. HIB-4292 was going towards Badhaghat and was being driven by Rajinder Singh. Claimant was given lift on the said tractor and after the tractor had barely moved 40-50 feet, the driver could not control the tractor which started moving backwards. Due to the sudden jerk the claimant fell down between the mudguard and tyre of the tractor and was crushed there. He suffered serious injuries and was taken to the government hospital, Ghumarwin. Then he was referred to the District Hospital, Bilaspur and finally to the Post Graduate Institute, Chandigarh. The claimant was aged about 18 years at the time of the accident. He was a student and one of his legs has been amputated on account of the injuries sustained in the accident.

The case of the present appellants was of pure denial and according to them no accident had taken place with the tractor and in fact the claimant suffered injuries when he fell down in a disused stone quarry.

The petitioner appeared as his own witness as PW-3 and gave details with regard to the accident and the nature of the injuries. His version was supported by PW-5 Lal Chand. No doubt this witness did not see the accident, but he does state that he saw that claimant

Suresh Kumar was crushed under Tractor No. HIB-4292 and he alongwith others extricated the claimant from there.

PW-6, Mukesh Kumar, has stated that on 4.4.2000 he was at Nehari bus stop and he saw tractor No. HIB-4292 and the tractor driver gave a lift to one boy and 40 to 50 feet thereafter an accident took place. He also states that he helped to take out the injured who was crushed between the mudguard and tyre of the tractor.

PW-7 is the S.H.O., who investigated the case. He has proved the FIR and the spot map. On the other hand, the respondent No.1, Rajinder Singh appeared as RW-1 and has stated that no accident took place.

After going through the entire evidence it is apparent that the accident had taken place with tractor No. HIB-4292. Not only has the claimant stated this fact, but PW-5 and PW-6 have also supported this version. The FIR Ex.PW-3/B was lodged on the same day. The version of the appellants that no accident had taken place with the tractor is apparently false and cannot be accepted.

As far as negligence is concerned, as per the statements of PWs 3 and 6 the accident occurred due to the negligence of the tractor driver. The tractor driver gives no explanation as to how the accident happened. In fact he has totally denied the accident. His version that the accident did not happen has already been disbelieved. The claimant has stated that the driver suddenly put the tractor in reverse gear and as such there was a sudden jerk and he fell down between the mudguard and the tyre. The fact that the claimant was extricated from between the mudguard and the tyre has been stated by the claimant, PW-5 and PW-6. The driver has not given any explanation with regard to this.

Mr. Bhupender Gupta, learned Senior Advocate, has strenuously argued that when the driver appeared in the witness box he was not put any question in cross examination to suggest that the accident occurred due to his negligence or that the claimant was traveling on the tractor. This fact is correct. However, a suggestion has been put to him that he was driving the tractor in question when the accident took place. The driver denied this suggestion. Once he denied the very factum of the accident there was no point in asking him

any further questions. The defence taken by the respondents that the claimant suffered injuries by falling in a disused stone quarry is also patently false. Whereas the trend of cross examination to the claimant suggests that he suffered the injuries when he fell into quarry when PW-6 who was the other eye witness was examined a suggestion was put to him that the accident did not occur due to the negligence of the driver. It was also suggested that there is an incline at the place of accident. A suggestion was also put to him that at the spot there is a curve and, therefore, the speed of the tractor was very less. This clearly shows that to this witness the suggestions put were that the accident did occur, but not due to the fault of the driver.

Keeping in view all these facts I am of the considered view that the appellants had taken up a false plea and the claimant has proved that the accident occurred due to the negligence of the driver.

As far as quantum is concerned, there is evidence on record to show that one leg of the claimant has been amputated. PW-1, Dr.G.D.Khullar was a member of the Board which granted disability certificate

and assessed the disability of the claimant at 60% permanent disability.

PW-2 Dr.Surinder Singh has proved the injuries suffered by the claimant and has also stated that such injuries will be cured after a long period. The claimant has also stated that he is still under treatment. The learned Motor Accident Claims Tribunal has awarded Rs.3,50,000/- as a consolidated amount for loss of earning, loss of amenities of life, discomfort, disappointment, mental stress etc. He has also awarded Rs.26,034/- on account of medical bills and Rs.8,440/- on account of taxi bills. In my opinion this award is on the conservative side. Keeping in view the fact that a young boy of 18 years has lost his leg, in my opinion, the claimant should have been awarded at least Rs.75,000/- for pain and suffering. The claimant would have also been awarded Rs.75,000/- for loss of amenities, future discomfort etc. The marital prospects of the claimant have greatly diminished by loss of one leg and in my opinion, he would have been entitled to Rs.25,000/- on this account.

Even taking minimum wages as a base the loss of income would not be less than Rs.1,000/- per

month or Rs.12,000/- per year and if multiplier of 18 is applied, the amount payable comes to Rs.2,16,000/-. In addition thereto the claimant should have been held entitled to the amount for attendant charges, transportation, medical expenses actually incurred and medical expenses which are likely to be incurred in future. The award is in fact on the lower side and calls for no interference. The appeal is dismissed with no order as to costs.

CMP No. 1039 of 2006

This is an application for release of the amount. It is ordered that out of the amount lying in deposit, a sum of Rs.1,00,000/- be released in favour of the claimant by remitting the same to his bank account, details whereof are already on record. The appellants have already deposited Rs.2.25 lacs and have furnished surety for the balance amount. The appellants shall deposit the balance amount within 12 weeks from today failing which the surety bonds may be enforced.

September 29, 2006(K)

(Deepak Gupta), Judge